IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JAIPUR BENCH, JAIPUR.

JUDGMENT

Smt. Gopali & Ors. Vs. Hem Raj & Ors.

D.B. Civil Special Appeal No. 11/1995
in
S.B. Civil Misc. Appeal No. 863/1994

Date of order :: July 5, 2007

PRESENT
HON'BLE MR.JUSTICE R.C. GANDHI.
HON'BLE DR. JUSTICE VINEET KOTHARI

Mr. Sunil Kumar Singodiya for the appellant.
Mr. Sandeep Mathur and Mr. Vinod Tyagi for the respondent

(ORAL, Per Hon'ble Mr. Gandhi, J.)

1. This appeal has been filed against the order dated 19.10.1994 passed by the learned Single Judge in Civil Misc. Appeal No. 863/1994 arising out of the award dated 20.07.1994 passed in the claim petition No. 666/1987 titled as *Smt. Gopali & Ors. Vs. Hem Raj & Ors*. An award of Rs. 50,000/- was passed by the Motor Accidents Claims Tribunal (for short, 'MACT' hereinafter) observing that the insurance company is liable to indemnify the award to that extent only.

2. Three appeals bearing Civil Misc. Appeal No. 213/1995, Hem Raj Vs. Ummaid, Civil Misc. Appeal No. 260/1995, Hem Raj Vs. Ram Nath and Civil Misc. Appeal No. 144/1995, Hem Raj Vs. Gopalji were filed before the learned Single Judge challenging the award of the MACT. The learned counsel for the respondents submits that the Award dated 20.07.1994 has been set aside by the learned Single Judge remanding the claim petition back to the MACT.

3. We have seen from the record that the Misc. Appeal No. 144/1995 has been decided by the learned Single Judge vide his order dated 27.05.2003 by setting aside the award dated 20.07.1994 with a direction to the MACT to consider it in terms of Section 95(2) of the Motor Vehicle Act, 1939 and after providing an opportunity for leading evidence, pass an appropriate order deciding as to whether the insurance company has limited or unlimited liability to satisfy the award. It has been brought to the notice of the court that MACT has not yet decided the claim petition.

4. The present appeal is filed by the claimant with regard to the extent of liability of the insurance company. Since the question is still open and being adjudicated by the MACT, therefore, this

appeal requires no adjudication being infructuous. The appeal is accordingly dismissed, as infrcutuous.

5. Registry is directed to send the record back to the MACT forthwith. The MACT was directed by the learned Single Judge to decide the claim petition within three months, which could not be done as has been conveyed that the file was summoned by the High Court. Since the record is being sent back, the MACT is directed to take up and decide the claim petition in priority within a period of two months.

(Dr.VINEET KOTHARI),J. (R.C. GANDHI),J.

Pramod